

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEITH LONGWISH,

Plaintiff,

Case No. 1:12-cv-53

v.

HON. JANET T. NEFF

ISAAC ALEXIS, et al.,

Defendants.

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983, alleging that Defendants violated Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment (Dkt 1). Defendants Alexis, Anseri and Edelman filed a motion for summary judgment (Dkt 22). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R) on December 5, 2012, recommending that this Court grant Defendants' motion (Dkt 31). The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (Dkt 34), to which Defendants responded on December 17, 2012 (Dkt 38). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff presents essentially three objections. First, in an apparent attempt to explain the evidentiary deficiencies highlighted by the Magistrate Judge, Plaintiff indicates that he "did send Exhibits with his complaint" and that, consistent with the instructions on his § 1983 complaint form,

he “did not cite cases or statutes” in his Complaint (Dkt 34 at 1). However, there is no indication in the Report and Recommendation that the fact that Plaintiff did not cite cases or statutes in his Complaint had any bearing on the Magistrate Judge’s recommendation to grant Defendants’ motion for summary judgment. The Magistrate Judge based her recommendation not on a lack of legal citations but on the insufficiency of the facts alleged (*see* R&R, Dkt 31 at 11-12, 13). Plaintiff’s objection does not demonstrate any error in the Magistrate Judge’s Report and Recommendation and is therefore denied.

Plaintiff’s second objection concerns the medical care he received (Dkt 34 at 1-2). Plaintiff notes that the prison lacks a cardiologist, that he once advised medical staff that he “was having chest pains and nothing was done,” and that he “had an emergency Cardiac Catheterization done where blockage was found” (*id.* at 1-2). Plaintiff merely re-alleges facts that were considered by the Magistrate Judge in the Report and Recommendation. Plaintiff does not establish any factual or legal error by the Magistrate Judge. Rather, having considered Plaintiff’s factual allegations, the Magistrate Judge properly concluded that “Plaintiff was not denied medical treatment,” and that, “[t]o the contrary, Plaintiff received regular medical treatment within MDOC facilities and was frequently transported to an outside hospital in response to his many complaints of chest pain” (R&R, Dkt 31 at 11-12). This objection is therefore also denied.

Plaintiff’s third “objection” to the Report and Recommendation is that he has been unable to obtain his complete medical records (Dkt 34 at 2). Objections must “specifically identify the portions of the proposed findings, recommendations, or report to which objections are made and the basis for such objections.” W.D. Mich. LCivR 72.3(b). Even assuming *arguendo* that Plaintiff in fact attempted to obtain and was refused complete copies of his medical records, he does not indicate what, if anything, the information would demonstrate. Specifically, Plaintiff has not alleged that

anything in the purportedly missing pages would reveal an error by the Magistrate Judge in recommending this Court grant Defendants' motion for summary judgment. Accordingly, this objection is also denied.

Finally, Plaintiff delineates a number of citations to Eighth Amendment cases, with excerpts of editorial summaries of the holdings in those cases (Dkt 34 at 2-5). However, Plaintiff does not state how these cases either relate to the facts of his case or demonstrate any error in the Magistrate Judge's Report and Recommendation. Therefore, to the extent that these citations may even be properly considered objections under W.D. Mich. LCivR 72.3(b), they are also denied.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

IT IS HEREBY ORDERED that the Objections (Dkt 34) are DENIED and the Report and Recommendation (Dkt 31) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (Dkt 22) is GRANTED.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of this decision would not be taken in good faith.

Dated: March 12, 2013

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge